

REFERENCE TITLE: **justices and judges; senate confirmation.**

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

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Introduced by
Representatives Montenegro, Gowan: Antenori

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE VI,
SECTIONS 37 AND 38, CONSTITUTION OF ARIZONA; RELATING TO THE JUDICIAL
DEPARTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the House of Representatives of the State of Arizona, the
2 Senate concurring:

3 1. Article VI, sections 37 and 38, Constitution of Arizona, are
4 proposed to be amended as follows if approved by the voters and on
5 proclamation of the Governor:

6 37. Judicial vacancies and appointments: initial
7 terms; residence; age

8 Section 37. A. Within sixty days from the occurrence of
9 a vacancy in the office of a justice or judge of any court of
10 record, except for vacancies occurring in the office of a judge
11 of the superior court or a judge of a court of record inferior
12 to the superior court, the commission on appellate court
13 appointments, if the vacancy is in the supreme court or an
14 intermediate appellate court of record, shall submit to the
15 governor the names of not less than three persons nominated by
16 it to fill such vacancy, no more than two of whom shall be
17 members of the same political party unless there are more than
18 four such nominees, in which event not more than sixty ~~percentum~~
19 PER CENT of such nominees shall be members of the same political
20 party.

21 B. Within sixty days from the occurrence of a vacancy in
22 the office of a judge of the superior court or a judge of a
23 court of record inferior to the superior court except for
24 vacancies occurring in the office of a judge of the superior
25 court or a judge of a court of record inferior to the superior
26 court in a county having a population of less than two hundred
27 fifty thousand persons according to the most recent United
28 States census, the commission on trial court appointments for
29 the county in which the vacancy occurs shall submit to the
30 governor the names of not less than three persons nominated by
31 it to fill such vacancy, no more than two of whom shall be
32 members of the same political party unless there are more than
33 four such nominees, in which event no more than sixty per ~~centum~~
34 CENT of such nominees shall be members of the same political
35 party. A nominee shall be under sixty-five years of age at the
36 time ~~his~~ THE NOMINEE'S name is submitted to the governor.
37 Judges of the superior court shall be subject to retention or
38 rejection by a vote of the qualified electors of the county from
39 which they were appointed at the general election in the manner
40 provided by section 38 of this article.

41 C. A vacancy in the office of a justice or a judge of
42 such courts of record shall be filled by appointment by the
43 governor without regard to political affiliation from one of the
44 nominees whose names shall be submitted to ~~him~~ THE GOVERNOR as
45 hereinabove provided. THE GOVERNOR SHALL SUBMIT TO THE SENATE

FOR CONSENT OF THE SENATE THE NAME OF THE NOMINEE FOR JUSTICE OR JUDGE. IF THE SENATE CONSENTS TO THE NOMINATION, THE GOVERNOR SHALL APPOINT THE NOMINEE TO SERVE FOR THE TERM, OR IN THE CASE OF A VACANCY, FOR THE UNEXPIRED TERM IN WHICH THE VACANCY OCCURRED. IF THE SENATE REJECTS THE NOMINATION, THE GOVERNOR SHALL PROMPTLY NOMINATE ANOTHER PERSON WHO MEETS THE REQUIREMENTS FOR THE OFFICE OF JUSTICE OR JUDGE. A NOMINEE FOR JUSTICE OR JUDGE SHALL NOT TAKE OFFICE OR DISCHARGE ANY DUTIES OF THE OFFICE BEFORE OBTAINING THE CONSENT OF THE SENATE. EACH JUSTICE OR JUDGE WHO IS CONFIRMED BY THE SENATE PURSUANT TO THIS SECTION SHALL, ON REQUEST OF THE SENATE, BE RECONFIRMED BY THE SENATE EVERY FOUR YEARS. In making the appointment FOR A JUSTICE OR JUDGE OF A COURT OF RECORD, the governor shall consider the diversity of the state's population for an appellate court appointment and the diversity of the county's population for a trial court appointment, however the primary consideration shall be merit. If the governor does not appoint one of such nominees to fill such vacancy within sixty days after their names are submitted to the governor by such commission, the chief justice of the supreme court forthwith shall appoint on the basis of merit alone without regard to political affiliation one of such nominees to fill such vacancy. If such commission does not, within sixty days after such vacancy occurs, submit the names of nominees as hereinabove provided, the governor shall have the power to appoint any qualified person to fill such vacancy at any time thereafter prior to the time the names of the nominees to fill such vacancy are submitted to the governor as hereinabove provided. Each justice or judge so appointed shall initially hold office for a term ending sixty days following the next regular general election after the expiration of a term of two years in office. Thereafter, the terms of justices or judges of the supreme court and the superior court shall be as provided by this article.

D. A person appointed to fill a vacancy on an intermediate appellate court or another court of record now existing or hereafter established by law shall have been a resident of the counties or county in which that vacancy exists for at least one year ~~prior to his~~ BEFORE THE PERSON'S appointment, in addition to possessing the other required qualifications. A nominee shall be under sixty-five years of age at the time ~~his~~ THE NOMINEE'S name is submitted to the governor.

1 38. Declaration of candidacy: form of judicial
2 ballot, rejection and retention: failure to
3 file declaration

4 Section 38. A. A justice or judge of the supreme court or
5 an intermediate appellate court shall file in the office of the
6 secretary of state, and a judge of the superior court or other
7 court of record including such justices or judges who are
8 holding office as such by election or appointment at the time of
9 the adoption of this section **OR ANY AMENDMENT TO THIS SECTION**
10 except for judges of the superior court and other courts of
11 record inferior to the superior court in counties having a
12 population of less than two hundred fifty thousand persons,
13 according to the United States census, shall file in the office
14 of the clerk of the board of supervisors of the county in which
15 he regularly sits and resides, not less than sixty nor more than
16 ninety days ~~prior to~~ BEFORE the regular general election next
17 preceding the expiration of his term of office, a declaration of
18 his desire to be retained in office, and the secretary of state
19 shall certify to the several boards of supervisors the
20 appropriate names of the candidate or candidates appearing on
21 such declarations filed in his office.

22 B. The name of any justice or judge whose declaration is
23 filed as provided in this section shall be placed on the
24 appropriate official ballot at the next regular general election
25 under a nonpartisan designation and in substantially the
26 following form:

27 Shall _____, (Name of justice or judge) of the
28 _____ court be retained in office? Yes No (Mark X
29 after one).

30 C. If a majority of those voting on the question votes
31 "No," then, upon the expiration of the term for which such
32 justice or judge was serving, a vacancy shall exist, which shall
33 be filled as provided by this article. If a majority of those
34 voting on the question votes "Yes," such justice or judge shall
35 remain in office for another term, subject to **SENATE**
36 **CONFIRMATION EVERY FOUR YEARS ON REQUEST OF THE SENATE AND**
37 removal as provided by this constitution.

38 D. The votes shall be counted and canvassed and the
39 result declared as in the case of state and county elections,
40 whereupon a certificate of retention or rejection of the
41 incumbent justice or judge shall be delivered to ~~him~~ **THE**
42 **INCUMBENT** by the secretary of state or the clerk of the board of
43 supervisors, as the case may be.

1 E. If a justice or judge fails to file a declaration of
2 ~~his~~ THE JUSTICE'S OR JUDGE'S desire to be retained in office, as
3 required by this section, ~~then his~~ THE JUSTICE'S OR JUDGE'S
4 office shall become vacant upon expiration of the term for which
5 such justice or judge was serving.

6 2. The Secretary of State shall submit this proposition to the voters
7 at the next general election as provided by article XXI, Constitution of
8 Arizona.